



8011-01

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-82314; File No. SR-Phlx-2017-100)

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Chapter VIII of the Phlx Pricing Schedule to Waive Port Fees for New PSX Participants for a Limited Time

December 13, 2017

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 29, 2017, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange’s connectivity fees at Chapter VIII of the Phlx Pricing Schedule to provide a waiver of all connectivity fees to new PSX Participants for a limited time

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqphlx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's connectivity fees under "Port Fees" at Chapter VIII of the Nasdaq PHLX LLC Pricing Schedule to provide a waiver of all such fees to new PSX Participants for a limited time. Port fees include the choices for connecting to PSX and receipt of data therefrom, together with the fees assessed for that connectivity. Specifically, the Exchange is proposing to waive all Port Fees for every Participant that is a "new PSX Participant" through December 31, 2018. The Exchange is defining a "new PSX Participant" as a Participant that was not a Participant before September 1, 2017. The Exchange believes that the proposed fee waiver will make PSX a more attractive venue for prospective Participants. The Exchange notes that its proposal is similar to one that it implemented previously to attract new Participants.<sup>3</sup>

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<sup>3</sup> See Securities Exchange Act Release No. 34-78665 (Aug. 24, 2016), 81 FR 59693 (Aug. 30, 2016) (SR-Phlx-2016-85) (waiving port fees through August 1, 2017 for those who were not Participants after July 1, 2016).

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>5</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change is reasonable because it will limit the overall costs incurred by new Participants in connecting to the Exchange, which may as a consequence attract new Participants. Attracting new Participants will benefit all market participants on PSX by ensuring that PSX remains deep and liquid. The Exchange believes that the proposed change is an equitable allocation and is not unfairly discriminatory because the Exchange will uniformly apply the same fee to all similarly situated Participants. In this regard, the Exchange is proposing to apply the fee waiver to new PSX Participants, which the Exchange proposes to define as a Participant that was not a Participant prior to September 1, 2017.

Limiting eligibility for the fee waiver, as described, will ensure that the waiver is tailored to and effective in its purpose of attracting new Participants. Waiving the fees for new Participants will ease the burden of participating on PSX, which may be a significant reason that such market participants have historically declined to become Participants. Thus, to the extent this waiver is successful, the proposed change will broaden participation on PSX, which will benefit all Participants by providing more liquidity.

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<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(4) and (5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed changes generally reduce the fee burdens on Participants in an effort to attract and retain Participants, which benefits all market participants on PSX to the extent the incentives are effective.

The Exchange notes that participation on PSX is completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. Thus, to the extent that the proposed changes to the connectivity fees proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share and Participants as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>6</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2017-100 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR-Phlx-2017-100. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2017-100 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).

